

CHAPTER TWO - THE COMPONENTS OF DELAWARE'S CHILD WELFARE SYSTEM

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH, & THEIR FAMILIES

The Department of Services for Children, Youth and their Families, also known as the Children's Department, was created in 1980, and is enabled statutorily by 29 Del. C., Ch. 90. The Department is within the executive branch of government, and is comprised of four divisions: the Division of Family Services, the Division of Youth Rehabilitative Services, the Division of Prevention & Behavioral Health Services, and the Division of Management and Support Services. The duties of the first three divisions are outlined below. The duties and powers of DSCYF, when it holds custody of an abused, neglected, or dependent child, are set forth in 13 Del. C. Ch. 25.

Division of Family Services

The Division of Family Services (DFS) is the lead agency charged with caring for Delaware's abused, neglected and dependent children. Currently, approximately 450 persons are employed by DFS, and as of November 30, 2011, were responsible for about 5,480 children. Of those children, approximately 800 were in the legal custody of DFS. The remaining children were receiving services from DFS while still in their home (intact families). The legal process, including the legal representation of children, involves the 800 children in DFS custody.

The DFS head office is located at 1825 Faulkland Road in Wilmington. Branches are spread throughout the state. New Castle County has sites at the New Castle County Police Station on Route 13 (hotline), Beech Street in Wilmington, and at University Plaza in Newark. Kent County has its offices in the Silver Lake Professional Plaza in Dover. Sussex County has locations in Georgetown, Milford, Seaford, and Frankford.

Each county has several units that include investigation, treatment, permanency, long-term care, foster care, and adolescents.

Div. of Prevention & Behavioral Health Services

The Division of Prevention & Behavioral Health Services (PBH) provides voluntary mental health and substance abuse treatment services to children less than 18 years of age. These services are available to those without health insurance as well as to those children who have Medicaid but who need more than 30 units of outpatient counseling services per year. PBH manages these services through licensed mental health professionals who coordinate and contract with community providers. PBH also operates several residential treatment centers within the State. In addition, PBH is responsible for providing prevention and early intervention services.

Approximately 21% of the children in DFS custody receive services from PBH. On November 30, 2011, PBH was serving about 1,460 children.

Division of Youth Rehabilitative Services

The Division of Youth Rehabilitative Services (YRS) provides probation and rehabilitation services to youth who have been adjudicated delinquent by the Family Court and ordered by the court system to receive rehabilitative services. These services range from secure care to community services. YRS operates five secure care facilities in Delaware. On November 30, 2011, YRS was serving approximately 1,920 youth, about 13% of whom were also receiving services through DFS.

To learn more about the Children's Department, visit their website at <http://kids.delaware.gov>

THE FAMILY COURT

The Delaware Family Court is a constitutional court that has original exclusive jurisdiction over abused, neglected, and dependent children. 10 Del. C. § 921. The Court's criminal and civil jurisdiction is set forth in 10 Del. C. §§921 and 922. Definitions that govern Family Court proceedings can be found at 10 Del. C. §901 (and at Tab 5).

The Family Court assigns one judge to a case from the day a child enters DSCYF custody. That judge remains with the case until permanency is achieved, either by reunification with the family, termination of parental rights and adoption, or some other permanent plan. There are currently seven judges in New Castle County, three judges in Kent County, and three judges in Sussex County that handle these cases. In New Castle County, initial hearings (Preliminary Protective Hearings) are typically held every Wednesday. In Kent and Sussex Counties, each Judge typically reserves one day per week on his or her calendar to handle DFS matters.

To learn more about the Family Court and/or to access Court forms, please visit its website at <http://courts.delaware.gov>.

THE DEPARTMENT OF JUSTICE

The Delaware Department of Justice (DOJ) has both criminal and civil divisions. The Deputy Attorneys General (DAG) in the civil division provide legal representation to most state agencies. The Department of Justice has created a Family Services Division which houses both civil and criminal matters that affect families. This includes the Deputies who represent DSCYF. Currently, there are nine deputies statewide who represent the Division of Family Services (5-New Castle, 2-Kent, 2-Sussex). In addition, there is one deputy assigned as General

Counsel to DSCYF. Patricia Dailey Lewis, Esquire, leads the Family Services Division. DFS is represented by a DAG in every court proceeding. Where PBH and/or YRS are also involved with a child in legal custody, the DAG is responsible for representing all three Divisions in Court. A current listing of DSCYF DAGs and their phone numbers is attached at Tab 4.

COURT APPOINTED SPECIAL ADVOCATE PROGRAM

The CASA program was created by statute in 1981. It is managed by the Family Court and is comprised of citizen volunteers who have agreed to represent the best interests of abused, neglected, and dependent children in child welfare proceedings. It is governed by 31 Del. C., Ch. 36. The CASA program has a statewide program director as well as ten CASA coordinators who provide oversight, guidance, and training to the citizen volunteers. In addition, for any court proceeding wherein the CASA must appear, the CASA is represented by a contracted attorney. Currently, there are four contracted attorneys statewide that represent the CASA program. Contact information for CASA is located at Tab 3.

Because CASA and OCA serve the same role in Family Court proceedings, it is rare that both will be in the same case. However, this circumstance most often exists when a teenager in foster care has a child for whom he or she is unable to care. If one agency is representing the teenage parent, the other agency will represent the child since sometimes what is best for the teenage parent is not what is best for the newborn.

OFFICE OF THE CHILD ADVOCATE

The Office of the Child Advocate was created in 1999. In the wake of the numerous child abuse deaths in Delaware, OCA was designed to

safeguard the welfare of Delaware's children. OCA's statutory mandates and duties are set forth in 29 Del. C. Ch. 90A. In addition to policy reform, legislative advocacy, and training, OCA was charged with securing legal representation for children's best interests in child welfare proceedings. In that regard, the attorney serving as an AGAL would have the same duties and responsibilities as the CASA program. However, the attorney would fill the role of CASA, CASA coordinator and CASA attorney. The program was designed to complement the CASA program since not enough citizen volunteers are available to represent the nearly 800 children in Delaware's foster care system. A phone directory of OCA is included at Tab 1. OCA's statute is located at Tab 6. OCA and CASA work together to ensure that all children in DSCYF custody receive representation as required by 13 Del. C. § 2504(f).

THE PARENT'S ATTORNEY

In Delaware, there is no absolute constitutional right for parents to have legal representation from the day their children are removed from their custody. The United States Supreme Court has held that there is no absolute constitutional right to representation in termination of parental rights proceedings. *Lassiter v. Dept. of Social*

Svcs., 452 U.S. 18 (1981). The Delaware Supreme Court has followed that holding in *Matter of Carolyn S.S.*, Del. Supr., 498 A.2d 1095 (1984) and extended that holding to all dependency/ neglect proceedings involving DFS in *Watson v. DFS*, No. 18, 2002 (Del. 2002). However, the Delaware Supreme Court has been clear that in applying *Lassiter*, most indigent parents whose children have been placed in DSCYF custody will be entitled to counsel. Furthermore, the new Family Court Rules require the appointment of counsel for indigent parents in matters where DFS is a party. See Family Court Civil Rules 206 and 207. As a practical matter, all indigent parents involved in proceedings where DFS is a party receive court-appointed counsel. Currently, 8 attorneys are contracted statewide – 4 in New Castle, 2 in Kent and 2 in Sussex.

In February of 2006, the Delaware Supreme Court decided *Walker v. Walker*, Del. Supr., 892 A.2d 1053 (2006). In *Walker*, the Court determined that the balancing test for legal representation of parents in termination of parental rights cases where the State was involved extended also to parents in private termination of parental rights proceedings. The case further inferred, through Footnote 5, that those rights by parents may further extend to private dependency/ neglect proceedings. *Id.*

